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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/042,844	11/19/2001	Mark David Siegel	23679-7005	4461
29180	7590	08/15/2007		
BELL, BOYD, & LLOYD LLP			EXAMINER	
P.O. BOX 1135			COBURN, CORBETT B	
CHICAGO, IL 60690				
			ART UNIT	PAPER NUMBER
			3714	
			MAIL DATE	DELIVERY MODE
			08/15/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/042,844

Applicant(s)

SIEGEL ET AL.

Examiner

Corbett B. Coburn

Art Unit

3714

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 August 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See attached.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Corbett B. Coburn/
Primary Examiner
Art Unit: 3714

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 3 August 2007 have been fully considered but they are not persuasive.

2. Applicant argues that Fig 6 teaches conducting a contest if a barcode is scanned twice.

Examiner has reviewed the description of Fig 6 (in particular paragraphs 0071 & 0072) & cannot find support for Applicant's contention. These paragraphs state:

[0071] If the monster is not compatible, the game proceeds to step 660. In some embodiments, an alarm sounds and a siren or similar graphic is displayed. In some embodiments, a voice states, "Enemy monster acquired!" or the like. In some embodiments, if the incompatible monster has been scanned for the first time, the monster will explode in step 665 and the process will terminate in step 655.

[0072] In other embodiments, even if the incompatible monster has been scanned only once, the process continues to step 670 and a simulated battle with the incompatible monster will ensue. In some embodiments, an incompatible monster will only be fought if a memory accessible to the gaming device already contains a threshold number of monsters, e.g., 3 monsters. In some embodiments, the incompatible monster will spawn additional monsters which will also engage in battle. After the battle is over, the process continues to step 655 and stops.

This clearly shows that monsters are scanned once. In one embodiment, the monster explodes.

In the other embodiment, battle ensues. There is no mention of scanning twice.

3. For Applicant's information, Examiners have received training concerning the KSR decision. After receiving this training, Examiner has come to the conclusion that even if the claimed limitation were supported, the number of scans would be a matter of design choice that would be well within the level of ordinary skill.

4. As to Applicant's argument that Wikipedia may contain false & misleading information, this is not persuasive. Applicant has presented absolutely no evidence that this particular

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Wikipedia article contains false or misleading information. Furthermore, Applicant has played Diablo and knows that there is an online version.

5. Applicant claims that the player controls two or more characters & that these characters do not attack each other. The point raised in the rejection – and not addressed in Applicant's arguments – is that a player controlling characters can readily decide not to have the characters fight.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Corbett B. Coburn whose telephone number is (571) 272-4447. The examiner can normally be reached on 8-5:30, Monday-Friday, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Corbett B. Coburn/
Primary Examiner, Art Unit 3714

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